

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Ernest G. Johnson  
Director  
Utilities Division

*EA for EGJ*

DATE: July 26, 2007

RE: IN THE MATTER OF THE APPLICATION OF IPC NETWORK SERVICES, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD POINT-TO-POINT PRIVATE LINE TELECOMMUNICATIONS SERVICE (DOCKET NO. T-20457A-06-0294)

30  
Arizona Corporation Commission

DOCKETED

JUL 26 2007

DOCKETED BY	<i>[Signature]</i>
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Attached is the Staff Report of the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Point-to-Point Private Line Telecommunications Services

Staff is recommending approval of the Application.

EGJ:PJG:red

Originator: Pamela J. Genung

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SERVICE LIST FOR: IPC NETWORK SERVICES, INC.  
DOCKET NO. T-20457A-06-0294

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STAFF REPORT  
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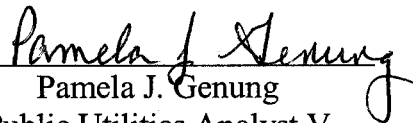
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IN THE MATTER OF THE APPLICATION OF IPC NETWORK SERVICES, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD POINT-TO-  
POINT PRIVATE LINE TELECOMMUNICATIONS SERVICE

July 26, 2007

## STAFF ACKNOWLEDGMENT

The Staff Report for IPC Network Services, Inc., Docket No. T-20457A-06-0294, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of IPC Network Services, Inc. Application requesting approval for a Certificate of Convenience and Necessity to provide Resold Point-to-Point Private Line Telecommunications Service within the State of Arizona and a petition for a determination that its proposed services should be classified as competitive.

  
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Pamela J. Genung  
Public Utilities Analyst V

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## ATTACHMENT

States/Jurisdictions in which IPC is currently offering similar services ..... Attachment A

## **1. INTRODUCTION**

On April 28, 2006, IPC Network Services, Inc. ("IPC" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold point-to-point private line telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On April 28, 2006, IPC submitted, to the Commission, a proposed tariff for the service it is requesting the authority to provide.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

IPC has indicated in its Application that it is currently providing telecommunications services in 17 states/jurisdictions. (See Attachment A). IPC indicated that it has not been denied approval in any states. Staff has contacted each of the Public Utility Commissions regulating those 17 states/jurisdictions to determine if IPC is certificated or registered to provide telecommunications services in the states listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information that Staff has obtained indicates that there have been no consumer complaints filed against IPC in any of the other states/jurisdictions in which IPC is authorized to provide telecommunications services. Based on this information, Staff believes IPC possesses the technical capabilities to provide resold point-to-point private line telecommunications services.

## **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

In its Application, IPC provided unaudited financial information for the twelve months ending September 30, 2005. As of September 30, 2005, IPC listed total assets of \$9,069,421; total equity of \$5,252,788; and a net income of \$562,299. The Applicant provided notes related to the financial information indicating that it will not rely on the financial resources of its parent company, IPC Systems, Inc. In response to Staff's first data request, an additional twelve months of financial information was provided for the twelve months ending September 30, 2004. The financial information provided listed total assets of \$9,109,000; total equity of \$4,524,000; and a net loss of \$455,000. In response to Staff's additional request for actual financial statements, IPC provided unaudited financial statements allowing Staff the opportunity to verify the financial information previously supplied by IPC.

The Applicant stated in its Tariff (reference Section 2.17 on Page 31 of IPC's proposed Tariff No. 1) that it may collect deposits from its resold point-to-point private line service customers. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an irrevocable sight draft Letter of Credit. As a switchless reseller, IPC is considered a reseller

of long distance service which carries a minimum bond or draft requirement of \$10,000 and a reseller of local exchange service which carries a \$25,000 minimum bond or draft requirement. Since the Applicant is requesting a CC&N for resold point-to-point private line telecommunications service, the minimum recommended amount of either a performance bond or an irrevocable sight draft Letter of Credit is \$35,000. The bond or draft coverage needs to increase in increments equal to 50 percent of the total minimum bond or draft amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum bond or draft amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

To that end, Staff recommends that the Applicant procure, at its discretion, either a performance bond or an irrevocable sight draft Letter of Credit equal to \$35,000. The minimum bond or draft amount of \$35,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$17,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$3,500 of the bond or draft amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit. Staff further recommends that proof of the above mentioned performance bond or irrevocable sight draft Letter of Credit be docketed within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value rate base information provided should not be given substantial weight in this analysis.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

## **5. REVIEW OF COMPLAINT INFORMATION**

The Applicant has neither had an application for service denied, nor revoked in any state. There have not been any civil or criminal proceedings against the Applicant. The Applicant has no service complaint history in any other state or jurisdiction.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years.

## **6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES**

### **6.1 PRIVATE LINE SERVICES**

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant. The Applicant is therefore engaged in providing telecommunications service for hire to the public, which fits the definition of a common carrier and a public service corporation. Staff believes the Commission has jurisdiction over the services to be provided by IPC. Staff also believes a hearing is necessary.

#### **6.1.1 Description of Requested Services**

IPC proposes to provide private line service. IPC provides resold voice and data telecommunications services primarily to financial and other trading companies. IPC's services are delivered over point-to-point private lines that are connected to proprietary trading equipment of its customers. Presently, the services are not interconnected to the public switched telephone network.

#### **6.1.2 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, a number of ILECs and CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.



6.1.3 The number of alternative providers of the service.

IXCs are the primary providers of private line service in the State of Arizona. Several ILECs and CLECs also provide private line service.

6.1.4 The estimated market share held by each alternative provider of the service.

IXCs hold a substantial share of the private line market. ILECs and CLECs are likely have a smaller share of the private line market.

6.1.5 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

6.1.6 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

IXCs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer substantially similar services.

## 7. RECOMMENDATIONS

Staff recommends that Applicant's Application for a CC&N to provide resold point-to-point private line telecommunications services, as listed in this Report, be granted. Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
4. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
5. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and

believes they are just and reasonable as they are comparable to other competitive local carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value information provided was not given substantial weight in this analysis;

6. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following conditions. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and state that the Applicant may collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
  - a. Procure either a performance bond or an irrevocable sight draft Letter of Credit equal to \$35,000. The minimum bond or draft amount of \$35,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$17,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$3,500 of the bond or draft amount.
  - b. Docket proof of the performance bond or irrevocable sight draft Letter of Credit within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission.
  - c. If at some time in the future the Applicant does not collect advances, deposits and/or prepayments from its customers, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond or irrevocable sight draft Letter of Credit regarding its resold services. Such request must reference the decision in this docket and must explain the Applicant's plans for canceling those portions of the performance bond or irrevocable sight draft Letter of Credit.
3. The Applicant shall abide by the Commission adopted rules that address Universal

Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

*7.1 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or intrastate access service markets. Therefore, the Applicant currently has no market power in the local exchange where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

## Attachment A

The following are the states/jurisdictions in which IPC is currently offering telecommunications services similar to those it intends to offer in the State of Arizona:

1. California
2. Connecticut
3. District of Columbia
4. Illinois
5. Indiana
6. Massachusetts
7. Michigan
8. Missouri
9. Montana
10. Nevada
11. New Jersey
12. New York
13. North Carolina
14. Ohio
15. Oregon
16. Pennsylvania
17. Texas